

Treaty constituting the ECSC - Protocol on the Code of the Court of Justice of the ECSC (Paris, 18 April 1951)

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Protocol on the Code of the Court of Justice

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THE HIGH CONTRACTING PARTIES:

DESIROUS of establishing the Code of the Court of Justice provided by Article 45 of the Treaty,

HAVE AGREED as follows:

Article 1

The Court of Justice established by Article 7 of the Treaty shall be constituted and shall perform its duties in accordance with the provisions of the Treaty and of the present Code.

TITLE I — The Judges

Oath of office

Article 2

Before commencing his duties, each judge shall take a public oath to discharge his duties conscientiously and with complete impartiality and to preserve the secrecy of the Court's deliberations.

Privileges and immunities

Article 3

The judges shall enjoy legal immunity. They shall retain this immunity after their term of office for all acts performed by them in their official capacity including their statements and writings.

The Court, sitting *en banc*, may suspend this immunity.

Only the courts with jurisdiction over the highest members of the national judiciary in each member State shall have jurisdiction in criminal proceedings against judges whose immunity has been so suspended.

The judges, without regard to their nationality, shall also enjoy within the territory of each member State the privileges enumerated in paragraphs (b), (c), and (d) of Article 11 of the Protocol on the privileges and immunities of the Community.

Conflicts of interest

Article 4

Judges may not hold any political or administrative office.

They may not engage in any business or professional activity, paid or unpaid, except by specific exemption

granted by a two-thirds majority of the Council.

They may not acquire or hold, directly or indirectly, any interest in any business related to coal or steel during their term of office and during a period of three years thereafter.

Remuneration

Article 5

The salaries, allowances and pensions of the President and the judges shall be fixed by the Council on the proposal of the Commission provided by paragraph 3 of Article 78 of the Treaty.

Termination of office

Article 6

In addition to the provisions for regular changes in membership, the term of office of any judge shall be terminated by death or resignation.

In case of resignation, the letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. The latter notification shall cause such office to become vacant.

Except for instances in which Article 7 below shall be applicable, each judge shall continue to hold office until his successor shall enter upon his duties.

Article 7

The judges may be removed from office only if, in the unanimous opinion of the other members of the Court, they no longer fulfil the requisite conditions thereof.

The President of the Council, the President of the High Authority and the President of the Assembly shall be notified thereof by the clerk.

Such notification shall cause such office to become vacant.

Article 8

A judge who is appointed to replace a member whose term of office has not expired, shall finish the term of office of his predecessor.

TITLE II — Organization

Article 9

The judges, the Court advocates and the clerk must reside at the seat of the Court.

Article 10

The Court shall be assisted by two Court advocates and one clerk.

Court advocates**Article 11**

The function of the Court advocates shall be to present publicly and with complete impartiality and independence oral reasoned arguments on the cases submitted to the Court, in order to assist the Court in the performance its duties, as defined in Article 31 of the Treaty.

Article 12

The Court advocates shall be appointed for a term of six years in the same manner as judges. There shall be a partial change in membership every three years. The Court advocate whose term expires at the end of the first period of three years shall be designated by lot. The provisions of the third and fourth paragraphs of Article 32 of the Treaty and the provisions of Article 6 of the present Code shall be applicable to the Court advocates.

Article 13

The provisions of Articles 2 to 5 and 8 above shall be applicable to the Court advocates.

The Court advocates may be removed from office only if they no longer fulfil the requisite conditions thereof. This decision shall be taken by unanimous vote of the Council, upon the advice of the Court.

Clerk**Article 14**

The clerk shall be appointed by the Court, which will fix the rules of his office according to the provisions of Article 15 below. He shall take an oath before the Court to discharge his duties conscientiously and with complete impartiality and to preserve the secrecy of the Court's deliberations.

The provisions of Articles 11 and 13 of the Protocol on the privileges and immunities of the Community shall be applicable to the clerk; however, the powers conferred by such Articles on the President of the High Authority shall be exercised by the President of the Court.

Article 15

The salaries, compensations and pensions of the clerk shall be fixed by the Council on the proposal of the Commission, provided by paragraph 3 of Article 78 of the Treaty.

Personnel of the Court

Article 16

The Court shall have functionaries or employees to permit the performance of its duties. They shall be directed by the clerk, under the general supervision of the President. Their rules of office shall be fixed by the Court. The Court shall designate one of them to act as alternate for the clerk in the event of the latter's absence or incapacity.

In cases of necessity, and in accordance with the conditions to be fixed by the rules of procedure provided in Article 44 below, qualified special masters may be asked to participate in the examination of cases pending before the Court and to cooperate with the reporting judge. Their rules of office shall be fixed by the Council on proposal by the Court. They shall be appointed by the Council.

The provisions of Articles 11, 12 and 13 of the Protocol on the privileges and immunities of the Community are applicable to the functionaries, employees and special masters of the Court; however, the powers conferred by such Articles on the President of the High Authority shall be exercised by the President of the Court.

Functioning of the Court

Article 17

The Court shall sit permanently. The length of its judicial recesses shall be fixed by the Court, with due regard for its judicial obligations.

Composition of the Court

Article 18

The Court shall sit *en banc*. However, the Court may establish within its own membership two divisions composed of three members each, in order to conduct preliminary examinations or to decide certain categories of cases, under the conditions provided by rules which the Court shall establish to that effect.

The Court shall only validly sit with an uneven number of members. The deliberations of the Court sitting *en banc* are valid if five members are present. The deliberations of the divisions are valid only if they are conducted by three judges: in the event of the absence or incapacity of one of the judges of the division, a judge of the other division may be asked to sit, in accordance with conditions which shall be established by the rules provided hereunder.

Appeals by States or by the Council shall, in all cases, be decided *en banc*.

Special rules

Article 19

The judges and the Court advocates may not participate in the disposition of any case in which they have previously participated as a representative, counsel or advocate of one of the parties, or as to which they have been called upon to render judgment as a member of a tribunal, of a commission of inquiry or in any other capacity.

If any judge or Court advocate, for a special reason, deems improper his participation in the judgment or the examination of a particular case, he shall so notify the President. If the President, for a special reason, deems it improper for a member of the Court or a Court advocate to sit or argue in a particular case, he shall so notify the person affected.

The Court shall resolve any difficulties arising from the application of the present Article.

A party may not invoke the nationality of a judge, or the absence from the bench or from one division of a judge of its own nationality, in order to ask a change in the composition of the Court or of one of its divisions.

TITILE III — Procedure

Representation and appearances of the parties

Article 20

The States and the different institutions of the Community shall be represented before the Court by representatives appointed for each case; the representative may be assisted by an advocate admitted to the bar of one of the member States.

Enterprises and all other individuals or legal entities must be represented by an advocate admitted to the bar of one of the member States.

The representatives and advocates appearing before the Court shall have the rights and guarantees necessary for the independent performance of their duties, under the conditions fixed in rules to be established by the Court and submitted to the approval of the Council.

The Court shall have, with respect to the advocates who appear before it, the powers normally recognized in this regard to courts and tribunals, under the conditions fixed by the same rules.

Professors of the member States whose national law allows them to plead shall have the same rights before the Court as are recognized to advocates by the present Article.

Phases of procedure

Article 21

The procedure before the Court shall be composed of two phases: written and oral.

The written procedure shall include communications to the parties, as well as to the institutions of the Community whose decisions are in dispute, petitions, memoranda, defences and observations and answers, if any, as well as all documentary evidence and supporting papers or certified copies thereof.

Notices shall be served by the clerk in the sequence and within the time intervals fixed by the rules of procedure.

The oral procedure shall include the reading of the report presented by the reporting judge, as well as the hearing by the Court of witnesses, experts, representatives and advocates and the arguments of the Court advocate.

Petitions

Article 22

Matters shall be referred to the Court by a petition addressed to the clerk. The petition must contain the name and the domicile of the party and the capacity of the signer, the subject-matter of the dispute, the arguments and a short summary of the grounds on which the petition is based.

This petition must be accompanied, where appropriate, by the decision whose annulment is asked, or, in case of an appeal against an implicit decision, by documentary evidence showing the date of filing of the request. If these documents are not annexed to the petition, the clerk shall ask the party in question to produce them within a reasonable period of time, and there shall be no foreclosure if compliance occurs after the time for appeal has elapsed.

Transmittal of documents

Article 23

When an appeal is taken against a decision of one of the institutions of the Community, such institution must transmit to the Court all the documents relating to the case before the Court.

Methods of examination

Article 24

The Court may ask the parties, their representatives or officials and employees, as well as the governments of the member States, to produce all documents and furnish all information which the Court deems desirable. In case of refusal, the Court shall take judicial notice thereof.

Article 25

The Court may at any time charge any person, body, office, commission or organ of its own choice with the duty of making a formal inquiry or expert study; to this effect, the Court may draw up a list of persons or

organizations qualified to serve as experts.

Publicity of the hearings

Article 26

The hearings shall be public, unless the Court, for substantial reasons, shall decide otherwise.

Reports of the hearings

Article 27

A report shall be kept of each hearing, signed by the President and the clerk.

Hearings

Article 28

The President shall fix the schedule of the hearings.

Witnesses may be heard under the conditions which shall be determined by the rules of procedure. They may be heard under oath.

During the hearings, the Court may also examine the experts and persons charged with a formal inquiry, as well as the parties themselves; the latter, however, may only plead through their representative or advocate.

When it is established that a witness or an expert has concealed or falsified the truth as to the facts on which he has testified or has been examined by the Court, the Court shall be empowered to refer such misfeasance to the Minister of Justice of the State of such witness or expert, for the application of the appropriate sanctions provided by the national law.

The Court shall have, with respect to defaulting witnesses, the powers which are generally recognized in this regard to courts and tribunals, under the conditions fixed by rules established by the Court and submitted to the approval of the Council.

Secrecy of judicial deliberations

Article 29

The Court's deliberations shall be and shall remain secret.

Judgments

Article 30

Judgments shall set forth the reasons therefor. They shall state the names of the judges who have participated therein.

Article 31

Judgments shall be signed by the President, the reporting judge and the clerk. They shall be read in public session.

Costs**Article 32**

Costs shall be determined by the Court.

Summary procedure**Article 33**

The President of the Court may make summary rulings, in accordance with a procedure to be established by the rules of procedure and in derogation, to the extent necessary, of certain provisions of the present Code, upon arguments for the granting of suspension of execution provided in the second paragraph of Article 39 of the Treaty, or for the application of provisional measures under the third paragraph of the same Article, or for the suspension of compulsory execution in accordance with the third paragraph of Article 92.

In the event of the absence or incapacity of the President, he shall be replaced by another judge under the conditions fixed by the rules provided in Article 18 of the present Code. The ruling of the President or his alternate shall be provisional in nature and shall not prejudice in any way the decision of the Court on the matter in its entirety.

Intervention**Article 34**

Individuals or legal entities establishing an interest in the outcome of a dispute pending before the Court may intervene in such dispute.

The arguments in favour of a petition for intervention may be directed only to the affirmation or dismissal of the arguments of a party.

Judgment by default**Article 35**

When, in an appeal to the Court's general jurisdiction, the defendant is duly summoned and fails to file written arguments, a default judgment shall be rendered against him. This judgment may be contested within a month from the date of the notification of the judgment. Such proceeding shall not suspend the execution of the default judgment, unless otherwise decided by the Court.

Contest by third parties

Article 36

Individuals or legal entities, as well as institutions of the Community, may institute third-party proceedings to contest judgments which have been rendered without notification to them, in the cases and under the conditions to be fixed by the rules of procedure.

Interpretation

Article 37

In case of difficulty as to the meaning or scope of a judgment, such judgment shall be interpreted by the Court upon the request of any party or any institution of the Community establishing an interest therein.

Reconsideration

Article 38

The Court may be asked to reconsider a judgment only on grounds of discovery of a fact susceptible of exerting a decisive influence thereon, which was unknown to the Court and to the party requesting such reconsideration prior to the rendering of such judgment.

The reconsideration procedure shall commence with a judgment of the Court explicitly setting forth the existence of a new fact, finding therein the characteristics giving rise to reconsideration, and holding the request for reconsideration admissible for this reason.

No request for reconsideration may be introduced after the expiration of a period of ten years from the date of the judgment.

Time limits

Article 39

The appeals provided by Articles 36 and 37 of the Treaty must be taken within the period of one month provided in the last paragraph of Article 33.

The periods of time based upon distance shall be fixed by the rules of procedure.

There shall be no loss of rights by reason of the expiration of time periods if the party in question proves the existence of an Act of God or *force majeure*.

Limitations

Article 40

The proceedings provided in the first two paragraphs of Article 40 of the Treaty must be instituted within five years from the date of the occurrence of the circumstance giving rise thereto. This limitation shall be tolled either by the petition to the Court or by the previous request which the aggrieved may direct to the competent institution of the Community. In this last case, the petition must be filed within the period of one month provided in the last paragraph of Article 33; the provisions of the last paragraph of Article 35 shall be applicable where appropriate.

Special rules for dispute between member States

Article 41

When a dispute between member States is submitted to the Court, under Article 89 of the Treaty, the other member States shall be notified forthwith of the subject-matter of such dispute.

Each of the States shall have the right to intervene in the proceeding.

The disputes referred in the present Article must be adjudged by the Court *en banc*.

Article 42

If a State intervenes in a case submitted to the Court under the conditions provided in the preceding Article, the interpretation given by the judgment shall also be binding on it.

Appeals by third parties

Article 43

The decisions of the High Authority under Section 2 of Article 63 of the Treaty must be notified to the buyer as well as to the enterprises in question; if the decision refers to all or an important category of enterprises, such individual notification may be replaced by publication.

An appeal may be taken, under the conditions in Article 36 of the Treaty, by any person on whom a daily penalty judgment has been levied in application of paragraph 4 of Section 5 of Article 66.

Rules of procedure

Article 44

The Court shall establish its own rules of procedure. These rules shall contain all the provisions necessary for the application and, where necessary, the complementation of the present Code.

Transitory provision

Article 45

Immediately after the taking of the oath, the President of the Council shall proceed to designate by lot the judges and the Court advocates whose term shall expire at the end of the first period of three years in accordance with Article 32 of the Treaty.

Done in Paris, the eighteenth of April, one thousand nine hundred and fifty-one.

ADENAUER.
Paul VAN ZEELAND.
J. MEURICE.
SCHUMAN.
SFORZA.
Jos. BECH.
STIKKER.
VAN DEN BRINK.